

**Joint Testimony of
J. Steven Griles, Deputy Secretary of the Department of the Interior
and Neal McCaleb, Assistant Secretary for Indian Affairs
before the Senate Committee on Indian Affairs
on Trust Reform**

July 30, 2002

Mr. Chairman and Members of the Committee, it is a pleasure for the two of us to appear before you again on a panel with the two co-chairs of the Joint Department of the Interior/Tribal Leaders Task Force on Trust Reform, Ms. Sue Masten, Chairwoman of the Yurok Tribe of Northern California, and Mr. Tex Hall, Chairman of the Three Affiliated Tribes of North Dakota. We are here today to brief the Committee on the status of the work of the Task Force.

Last week, the Task Force held its seventh meeting in Portland, Oregon. Earlier meetings were held around the country in Shepherdstown, WV, Phoenix, AZ, San Diego, CA, Minneapolis, MN, and Bismarck, ND. The Task Force was formed last December in response to the Department's proposal to create a new organizational unit called the Bureau of Indian Trust Asset Management, which envisioned the consolidation of most trust reform and trust asset management functions located throughout the Department into a new bureau. This proposal was subsequently strongly opposed by the tribes.

The Task Force is charged with providing proposals to the Secretary on organizational alternatives for the management of trust services within the Department. The Task Force's purpose is to evaluate

organizational options and to submit to the Department one or more alternatives to reorganize the trust asset management system.

The composition of the Tribal membership of the Task Force was determined by all the tribes and represents a broad cross-section of tribal interests on a regional basis. The Task Force consists of two tribal leaders from each region, with a third tribal leader, from each region, acting as an alternate.

Members of the Federal team consist of senior Department officials, including myself and Assistant Secretary McCaleb.

The members of the Task Force have all come a long way personally and professionally as participants in this group. The two of us have attended every one of these meetings, as have our co-chairs here with us today. As we talk about the future of the Bureau of Indian Affairs and work together to resolve issues related to how the federal government carries out its trust responsibility to Indian people, we are building another kind of trust among ourselves.

While we have reached agreements on many key issues related to the organization of the Department of the Interior and management of our trust functions, our work is not done. We will be meeting in August in Anchorage Alaska, and have other meetings scheduled.

On June 6, at a meeting of the National Congress of American Indians, the Department at the recommendation of the Task Force solicited comments on various options proposed by the Task Force

for restructuring of the Department with respect to trust. We received back from the Tribes detailed and thoughtful comments. We heard the following themes:

- ▶ The Federal Government's commitment to self-governance and self-determination must not suffer as a result of federal trust reform.
- ▶ Trust reform must not result in diminishment of the government's trust obligation to Indian people.
- ▶ There is a need for creation of a high level position within the Department who will be the primary individual within the Department responsible for ensuring that the trust asset management responsibility is carried out appropriately throughout the Department.
- ▶ Trust asset management issues must be addressed at the regional and agency level of the Bureau of Indian Affairs (BIA).
- ▶ There can be no one-size-fits-all solution. Trust reform must recognize that there are three models for receiving services: through self-governance compacts, self-determination contracts, and direct services from the BIA.

- ▶ There is no bright line between fiduciary trust asset responsibilities and other trust responsibilities.
- ▶ We must ensure more accountability within the current BIA structure.
- ▶ Management of trust services and trust resources must be kept at the local level.
- ▶ We need a clear definition of the trust duty and responsibility for management of trust assets.
- ▶ There must be oversight of the BIA by an entity that has the authority to compel and enforce corrective action.

As the above illustrates, reform of our current system is not an easy task. At the Task Force meeting last week, we reached agreement as a group to recommend that Congress establish a new position, an Under Secretary for Indian Affairs, who would be appointed by the President, subject to confirmation by the Senate, and would report directly to the Secretary. The Under Secretary would have direct line authority over all aspects of Indian affairs within the Department. This authority would include the coordination of trust reform efforts across the relevant agencies and programs within the Department to ensure these functions are performed in a manner that is consistent with our trust responsibility, as well as a number of other duties carefully hammered out between the Department and the Tribal Leaders on the Task Force. We believe reaching consensus on the creation of this position and the duties of this new senior official was a major accomplishment of the Task Force.

We have also reached agreement on creation of an Office of Self-Governance and Self-Determination within the Office of the Secretary, reporting directly to the new Under Secretary for Indian Affairs. This will enhance the abilities of the tribes that are interested in moving toward more compacting and contracting to carry out the services due to Indian tribes. Similarly, we have agreed that any legislation should also include the creation of a Director of Trust Accountability reporting directly to the Under Secretary who will have the day-to-day responsibility for overseeing the trust programs of the Department.

Perhaps most importantly, last week in the working group we reached agreement on a restructuring of the Bureau of Indian Affairs. The Department and the Tribes agree that our trust duty requires a better way of managing than has been done in the past. The Department's longstanding approach to trust management needed to change, and this change must be reflected in a system that is accountable at every level with people trained in the principles of trust management. When we arrived in Portland last week, the Department brought a proposal to create Trust Centers at the regional level within the Bureau and trust officers at the agency level. It was the best way we could see to ensure that decisions made at the regional and local level were reviewed to ensure that we were meeting our fiduciary trust responsibility to both tribes and individual allottees.

Our tribal counterparts on the Task Force had a very different view of what changes needed to be made within the Bureau. The tribes expressed concern that these trust officers would involve themselves in most of the day-to-day activities at the agency level without being answerable to the

Superintendent or the Regional Directors. The differences between us seemed too great to resolve in just a few days. However, once we stopped talking in concepts, rolled up our sleeves, and took the time to put on the table our real concerns, we were able to develop an organizational model that does its best to ensure that the Federal Government can exercise its fiduciary trust duty, and, at the same time, ensure that tribal governments can be active managers, to the degree desired, of their own trust assets. A copy of the working group consensus reorganization proposal is attached to this testimony for your information. This reorganization can be done administratively and does not require additional legislative authority. We believe that it is likely to have the greatest positive impact on the future management of trust assets.

As we mentioned above, the work of the Task Force is not complete. We are exploring the possibility of creating a commission with oversight responsibilities for trust funds management. We have reached agreement within the Task Force to recommend creation of an independent commission on Indian trust funds within the Executive Branch. While we have mutual agreement on many of the functions this commission should have, we have mutual disagreements as well. We are not in agreement on the Commission's duties and we have not discussed the Commission member qualifications or term of service. We have presented a number of commission ideas that we plan to discuss with the Task Force at the upcoming meeting in August. We plan to participate with a working group set up by the Task Force whose charge it is to try to resolve these differences and reach consensus on the details of this commission's duties and responsibilities. Our goal is to have an agreement on this issue at our August meeting in Anchorage.

Finally, we were also asked by the tribal members of the Task Force to work with the tribes on draft statutory trust standards presented at our meeting last week. These standards will be carefully reviewed within the Administration in preparation for our next Task Force meeting. We have not reached any agreement on the trust standards. However, we will be having both our attorneys and attorneys at the Department of Justice look at them.

This concludes our statement. We would be happy to answer any questions the Committee might have at this time.